contract, breach of it, or what not, and then, having determined those issues in one action, to bring a second action for the relief appropriate to the facts found in the first one. If he sues at law for a breach, he is entitled to recover the damages he has sustained by such breach; and recovering them, whether their amount be large or small, bars him from insisting thereafter in equity that defendant perform the contract. If, as the trial of the action at law progresses, plaintiff discovers that the evidence is not likely to secure him sufficient damages, he should apply to withdraw a juror, so as to leave himself free to apply thereafter for equitable relief. In the cause at bar he was warned by the ruling of the trial judge, before it was sent to the jury, that he could not expect substantial damages. When after that he persisted in going on to verdict and judgment, he made an election which he cannot now repudiate."

JUDGMENT—COLLATERAL ATTACK—DURESS—EXTORTION—RESTITUTION.—Plaintiff having charged defendant with having maintained illicit relations with his (plaintiff's) wife in the State of Michigan, and having pursued defendant to his residence in Canada, was paid by defendant a sum of money in satisfaction of the injury. Soon thereafter plaintiff was arrested by the Canadian authorities for obtaining this sum through threats and menaces, was confined in jail for six weeks, when he obtained his release and discharge by signing a retraction of the charge he had made against defendant, surrendering the money to defendant, and entering a plea of guilty to the charge of extortion, whereupon the court suspended sentence on plaintiff's agreeing to leave the jurisdiction. The parties having returned to Michigan, suit was instituted by plaintiff for the sum of money so returned, as having been obtained from him by duress. *Held*, that a verdict for defendant should have been directed, because the judgment of conviction of the criminal charge was conclusive that plaintiff was properly adjudged guilty, and that plaintiff in this action cannot collaterally impeach the foreign judgment, where no fraud in obtaining the judgment is shown. *Coveney* v. *Phiscator* (Mich.), 93 N. W. 619. Citing Black on Judgments, sec. 5829; *Palmer* v. *Oakley*, 2 Doug. 433, 47 Am. Dec. 41.

NATIONAL BANKS—STATE REGULATION—RECEIVING DEPOSITS WHEN INSOLVENT.—So far as a State law attempts to prohibit national banks from receiving deposits when insolvent, and prescribes a punishment for a violation of such prohibition by any officer or agent thereof, it is invalid as an attempt to control and regulate the business operation of national banks. *Easton* v. *Iowa* (U. S. Sup. Ct., Feb. 2, 1903.)

The plaintiff in error was convicted and sentenced to five years imprisonment under the provisions of a statute of Iowa for the offense of having received, as president of the First National Bank of Decorah, Iowa, a deposit of $100, at a time when he knew the bank to be insolvent. The Supreme Court of Iowa affirmed the judgment of conviction, but the United States Supreme Court reverses both judgments, reaffirming the principle propounded in *Davis* v. *Elmira Savings Bank*, 161 U. S. 275, as follows:

"National banks are instrumentalities of the Federal government, created for a public purpose, and as such necessarily subject to the paramount authority of the United States. It follows that an attempt by a State to define their duties or

control the conduct of their affairs is absolutely void, wherever such exercise of authority expressly conflicts with the laws of the United States, and either frustrates the purpose of the national legislation or impairs the efficiency of these agencies of the Federal government to discharge the duties for the performance of which they were enacted. These principles are axiomatic, and are sustained by the repeated adjudications of this court."

BANKS AND BANKING — COLLECTIONS — DEBTOR AND CREDITOR. — Where a special agency is created by the sending of commercial paper to a bank for collection, and the bank has no authority to hold and credit the proceeds of the draft, but is bound by the agreement to remit them immediately, the relation of beneficiary and trustee is created, and the money collected, or its equivalent, can be recovered from the assignee of the insolvent bank. Formerly the equitable right of following misapplied money or other property into the hands of the parties receiving it depended upon the ability to identify it, the equity attaching only to the very property misapplied. But it is now held as the better doctrine that confusion does not destroy the equity entirely, but converts it into a charge upon the entire mass, giving the party injured priority over the other creditors. So long as the property or its substantial equivalent can be found, it will be held to be impressed with a trust in favor of the owner, and if the trustee has mingled it with his own, he will be deemed to have used his own rather than another's and so as to leave the remainder under the trust. *Peters Shoe Co.* v. *Murray* (Tex.), 71 S. W. 977. Citing *Bank* v. *Weenes*, 69 Tex. 489, 5 Am. St. Rep. 85; *Frelinghuysen* v. *Nugent* (C. C.), 36 Fed. 229; *Central Nat. Bank* v. *Ins. Co.*, 104 U. S. 54; *Peters* v. *Bain*, 133 U. S. 670; *Kater* v. *Oriental Co.* (R. I.), 27 Atl. 443.

In the principal case, however, there having been no course of dealing between the parties, and no express contract or instructions, except to collect, it was held that only the ordinary relation of debtor and creditor existed. Citing Zane Banks and Banking, sec. 133; *Bank* v. *Armstrong*, 148 U. S. 50; *Bank* v. *Hubbell*, 117 N. Y. 384, 7 L. R. A. 852, 15 Am. St. Rep. 515.

ATTORNEY AND CLIENT—DISCLOSURE COMMISSIONER—TROVER.—There is no legal principle by which one person can deprive another of his property, and convey a good title thereto, without the owner's consent, or some act equivalent thereto, or by the right of eminent domain.

In an action of trover to recover the value of a watch, the title to which was claimed by both the plaintiff and the defendant, it appeared that the plaintiff was a disclosure commissioner, before whom a debtor disclosed a watch, which was appraised at $5 by the commissioner, and assigned in writing to the creditors, the petitioners, and delivered to their attorney. The commissioner's fees were $5.19, for the payment of which the petitioners had made no deposit with their attorney. The attorney, on request of the commissioner for his fees, sold to him the watch in payment thereof. One of the petitioners subsequently obtained possession of the watch, and refused, on demand, to deliver it to the plaintiff. *Held*, that the watch, by the assignment and delivery to the attorney, became the absolute property of the petitioners, and that the attorney had no right, by virtue of his agency